

Appl. No. 09/350,202

Amdt. dated September 22, 2004

Second Suppl. Amdt. and Response to Office Action of April 13, 2004

REMARKS

At the outset, Applicants would like to thank the Examiner for his telephone call on September 20, 2004 to Applicants' representative, Mrs. Colleen Superko, to inform her that the instant application would be allowable if a Terminal Disclaimer is filed to obviate the obviousness-type double patenting rejections presented in the Office Action of April 13, 2004.

Amendments to the Claims:

Claims 60-65 and 67-79 are pending in the instant application.

Claims 60-64 have been amended to improve the clarity of these claims. Specifically, these claims have been amended to recite, in relevant part, that the antibody fragments previously recited in these claims are CD3-binding and CD28-binding antibody fragments.

No new matter has been added by way of these amendments to the claims.

Obviousness-Type Double Patenting Rejections:

Applicants would like to point out that, in the above-referenced rejection, the Examiner included a provisional obviousness-type double patenting rejection over co-pending USSN 09/553,865. Applicants respectfully aver that this rejection has been erroneously made, as the claims of the instant application are directed to methods for inducing *ex vivo* proliferation of a population of T cells to sufficient numbers for use in therapy, whereas the claims of co-pending USSN 09/553,865 are directed to compositions of matter. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the provisional obviousness-type double patenting rejection over co-pending USSN 09/553,865.

To obviate the other obviousness-type double patenting rejections presented in the Office Action of April 13, 2004, Applicants present herewith as **Appendix A**, a Terminal Disclaimer over the patents and applications listed in the rejection.

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Information Disclosure Statement:

Applicants respectfully request that the Examiner return an initialed copy of the Forms
PTO-1449 filed on May 11, 2004.

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CONCLUSION

Applicants believe that all of the outstanding rejections of record have been overcome by amendment and/or argument. Accordingly, the claims are now believed to be in condition for allowance. Applicants respectfully request that the Examiner issue a timely Notice of Allowance.

Other than the fees due in connection with the Terminal Disclaimer no additional fees are believed to be due in connection with this communication. However, if any additional fees are due, please apply any additional charges, or credit any overpayment, to our Deposit Account No. 08-0219.

The Examiner is invited to telephone the undersigned at the telephone number given below in order to expedite the prosecution of the instant application.

Respectfully submitted,

Dated: September 22, 2004


Colleen Superko
Reg. No. 39,850

WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Tel.: (617) 526-6564
Fax: (617) 526-5000